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Of Attorneys for Defendants

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

**NIKE, INC.**, an Oregon corporation,

Plaintiff,

v.

**HIREKO TRADING COMPANY, INC.**, a California corporation, and **PINEMEADOW GOLF PRODUCTS, INC.**, an Oregon corporation,

Defendants.

Civil No. 05-01734 MO

**ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANTS HIREKO TRADING COMPANY, INC., AND PINEMEADOW GOLF PRODUCTS, INC.**

Defendants Hireko Trading Company, Inc. ("Hireko"), and Pinemeadow Golf Products, Inc. ("Pinemeadow"), answer plaintiff's complaint as follows:

1. Defendants admit the allegations of paragraphs 1, 2, 3, and 4.
2. Defendants admit the allegations of paragraph 5 except deny that this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1337(a).
3. In answer to paragraph 6, defendants admit that this Court may exercise personal jurisdiction over Hireko because it regularly does business in this district. Defendants deny that Hireko has offered to sell or sold products covered by Nike's patents.

4. In answer to paragraph 7, defendants admit that this Court may exercise personal jurisdiction over Pinemeadow because it has a principal place of business, and regularly does business, in this district. Defendants deny that Pinemeadow has offered to sell or sold products covered by Nike's patents.

5. In answer to paragraph 8, defendants admit that venue is proper in this judicial district pursuant to § 1331(b) and (c) because Pinemeadow resides in this district. Defendants deny that they committed acts of infringement, and defendants deny all other allegations of paragraph 8.

6. Defendants admit the allegations of paragraph 9.

7. In answer to paragraph 10, defendants admit that Nike owns various United States design patents covering its golf club designs. Defendants deny that Nike's golf club designs are innovative. Defendants lack knowledge or information sufficient to form a belief concerning the remaining allegations of paragraph 10 except that defendants admit that each of the design patents attached to the Complaint states that Nike is the assignee.

8. In answer to paragraph 11, defendants admit that Hireko is in the business of manufacturing, or having manufactured, offering to sell, selling, and importing golf club components, including golf club heads, shafts, and grips, and that Hireko also assembles, offers to sell, and sells complete golf clubs using these components. Defendants deny that Hireko's components "simulate the designs of major manufacturer's golf clubs, such as Nike's golf clubs."

9. Defendants admit the allegations of paragraph 12 except deny that Hireko's website is "highly interactive."

10. Defendants admit the allegations of the first sentence of paragraph 13 and that Hireko promotes, offers to sell, and sells its products to retailers for resale at the PGA Merchandise Show. Defendants lack knowledge or information sufficient to form a belief

concerning all of the other allegations of paragraph 13.

11. Defendants admit the allegations of the first sentence of paragraph 14 except deny that the golf clubs, golf club components, including golf club heads that Hireko has made, used, offered to sell, sold, and/or imported have designs that are covered by the Nike Design Patents. Defendants deny the allegations of the second sentence of paragraph 14.

12. Defendants admit the allegations of paragraph 15 except deny that any of the clubs Hireko promotes, offers to sell, sells, or sold were "Infringing Clubs" or drivers, woods, and irons covered by Nike's '108, '513, and '862 patents.

13. In answer to paragraph 16, defendants admit that on January 31, 2004, during the PGA show, Nike provided Hireko with a letter, a copy of which is attached to the Complaint as Exhibit K. The letter speaks for itself. Defendants deny that Hireko infringed any of Nike's patents. Defendants deny all other allegations of paragraph 16.

14. Defendants admit the allegations of the first sentence of paragraph 17 except deny that Hireko's Synchron Medic irons and Synchron Hybrid Utility clubs are covered by Nike's '491, '492, '493, and '489 patents. Defendants admit that on January 31, 2004, during the PGA show, Nike provided Hireko with a letter, a copy of which is attached to the Complaint as Exhibit K. The letter speaks for itself. Defendants deny all other allegations of paragraph 17.

15. In answer to paragraph 18, defendants admit that Nike's March 16, 2004, letter to Hireko is attached to the Complaint as Exhibit L, and that the letter states that Nike's '491 '492, and '493 patents had issued. The letter speaks for itself. Defendants deny all other allegations of paragraph 18.

16. In answer to paragraph 19, defendants admit that Nike's '489 patent issued later in 2004, and that on January 14, 2005, Nike provided Hireko with a letter, a copy of which is attached to the Complaint as Exhibit M. The letter speaks for itself. Defendants deny all other allegations of paragraph 19.

17. In answer to paragraph 20, defendants admit that approximately two weeks after Nike's January 14, 2005 letter, Hireko promoted and offered to sell Synchron Medic Hybrid Clubs at the January 2005 PGA Merchandise Show. Defendants deny all other allegations of paragraph 20.

18. In answer to paragraph 21, defendants admit that on January 28, 2005, Nike provided a letter to Hireko, a copy of which is attached to the Complaint as Exhibit N. Defendants deny all other allegations of paragraph 21.

19. Defendants deny the allegations of paragraph 22 except admits that Hireko sold approximately 2,800 sets of its Synchron Medic irons after receiving Nike's March 16, 2004, letter, and that each set includes eight different clubs: 3 iron, 4 iron, 5 iron, 6 iron, 7 iron, 8 iron, 9 iron, and pitching wedge.

20. Defendants admit the allegations of paragraph 23, except deny that either of them promotes, offers to sell, sells, or sold products that infringe any of Nike's patents.

21. Defendants deny the allegations of paragraphs 24 and 25.

22. Defendants answer the allegations re-alleged and incorporated in paragraph 26 as answered above.

23. Defendants deny the allegations of paragraphs 27 – 30.

24. Except to the extent expressly admitted, defendants deny all of the allegations of the Complaint.

First Affirmative Defense

(Invalidity)

25. Each of the design patents-in-suit is invalid on grounds specified in Part II of Title 35 as a condition for patentability.

Second Affirmative Defense

(Noninfringement)

26. Defendants have not infringed any of the design patents-in-suit.

WHEREFORE, defendants request the following relief:

1. A judgment dismissing plaintiff's claim for damages with prejudice,
2. A judgment denying plaintiff's request for injunctive relief,
3. A judgment awarding defendants their reasonable attorney fees, costs, and disbursements, and
4. Such other relief as the Court deems equitable.

DATED this 10<sup>th</sup> day of January, 2006.

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By: 

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